Supreme Court, U.S.
FILED

02185 7 MAY 22 2003

No. 03-

IN THE SUPREME COURT
OF THE UNITED STATES

CHESTER JONES and JOSEPH SEYMOUR JONES,

Pro Se Petitioners,

v.

LIBERTY BANK OF COLLINSVILLE, ALABAMA, et al.,

Respondents.

On Petition For
Writ Of Certiorari To The
Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

CHESTER JONES and
JOSEPH SEYMOUR JONES
Pro Ce
Adult Legatees of the Estate
of Nora Lee Jones, Deceased
1464 St. Stephens Road
Mobile, Alabama 36603-5031
Phone: 251/433-0053

42pp

QUESTIONS PRESENTED

1. Whether the Pro Se Petitioners are entitled to Certiorari Review where on February 21, 2003, The Supreme Court of Alabama's Certificate of Judgment "Denied" the Petition for Writ of Certiorari with "No Opinion" after The Court of Civil Appeals of Alabama on November 1, 2002 "Overruled" the Application for Rehearing with "No opinion written on rehearing" where The Court of Civil Appeals of Alabama on September 6, 2002 "Affirmed. No Opinion" the Appeal of the Circuit Court of Dekalb County, Alabama's November 15, 2001 "Ordered, Adjudged And Decreed" Summary Judgment in favor of the Respondants and against the Pro Se Petitioners on all claims filed on July 9, 2001 as a Complaint by the Pro Se Petitioners as Adult Legatees of the Estate of Nora Lee Jones, Deceased In The Circuit Court of Dekalb County, Alabama's Case Number CV-2001-301.

2. Whether the trial court erred in finding that the present action against the Respondents was barred by the Doctrine of *res judicata*.

3. Whether the trial court erred in finding that the Pro Se Petitioners failed to present genuine issues of material fact in support of the claims against the Respondents, Liberty Bank of Collinsville, Alabama, et. al.

PARTIES TO THE PROCEEDINGS

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BASIS FOR SUPREME COURT JURISDICTION

The Supreme Court of Alabama's February 21, 2003 "denial" with "no opinion" regarding the Petition for Writ of Certiorari In re: Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, Alabama, et. al. (Dekalb County Circuit Court Case Number CV-2001-301; Civil Appeals Case Number 2010309) is the basis for Supreme Court jurisdiction according to statutory provisions the Pro Se Petitioners believes confers on the Court to review on a writ of certiorari the judgment in question. App. 1-18.

The statutory provisions the Pro Se Petitioners believes confers the Supreme Court jurisdiction are unlimited to the extent that broad and specific inperpretations are required to restore contractual ingetrity where significant issues of authenticity remain in the Supervision and Consumer Protection regarding a July 29, 1988 safe deopsit box rental agreement contract and release of liability for its contents according to Part 2 of the Federal Rules of Evidence. App. 28-31.

Rule 901. Requirement of Authentication or Identification.

(a) General provision.-The requirement of authentication or identification as condition precedent to

admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustration.-By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge.-Testimony that a matter is what it is claimed to be.

(3) Comparison by trier or expert witness.-Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like.-Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(7) Public records or reports.-Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form,

is from the public office where items of this nature are kept.

(9) Process or system.-Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Method provided by statue or rule.-Any method of authentication or identification provided by Act of Congress or by other rules prescribed by the Supreme Court pursuant to statutory authority. {Adopted Jan. 2, 1975, effective July 1, 1975.}

Federal law, and not state law, governs procedural matters in respect to authentication of challenged documents. *Banks v. U.S., D.C.* App. 1976, A.2d 8. (Wright, Miller and Cooper, Federal Practice and Procedure: Evidence Section 1731) (Omitted in Appendix)).

A valid Last Will and Testament of the Decedent was signed and notarized on October 27, 1994 granting Adult Legatees inherited interests in the July 29, 1988 contract for the contents of the safe deposit box while assigning a Federal Deposit Insurance Corporation member bank "transfer warranties" liability to safeguard those Adult Legatees' inherited interest according to what are

standard methods of Probate under the Codes of the State of Alabama. App. 19-23.

The constitutional provisions, treaties, statues, ordinances, and regulations involved In The Matter of Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et. al. are believed to be as unlimited to the extent that broad and specific interpretations are required to restore a sense of constitutionality where the Pro Se Petitioners as Adult Legatees of the Estate of Nora Lee Jones, Deceased, have had burdens of proof "shifted" as if both committed crimes in defense of the Decendent's wishes that her assets be "our own and in fee simple". She died on September 7, 1995.

STATEMENT OF THE CASE

The "No Opinion" affirmance of the trial court's entry of Summary Judgment and "denial without opinion" to rehear or review the decision conflicts with prior Alabama case precident authorities and authentication requirements are now the basis for Certiorari Review. Pet. 1-3, App.. 1-43.

I. The trial court erred when it found that the present action was barred by the doctrine of *res judicata*. App. 13. *Res Judicata* is an affirmative defense which was not raised in any pleading by the

Respondent and was therefore waived. The Respondent never raised the issue prior to the summary judgment hearing and such an argument is not properly addressable at a summary judgment hearing if it has not been raised in a prior pleading.

The Respondent also failed to establish that the elements of *res judicata* were present. Although this action arises from the same Estate as did a prior action, the Respondent was not a party to the prior action and the core facts asserted in this action are different than the facts asserted in the previous action. In the prior action, the Pro Se Petitioners asserted misappropriation of assets of the Estate of Nora Lee Jones, Deceased through misrepresentation in the process of probating the Decedent's Estate. App. 38-39. The present action alleges that the present Respondents wrongfully allowed the spouse of the Executor-to-be to forge his name to gain access to a safe deposit box which belonged to the Decedent, thereby allowing the spouse of the Executor-to-be to steal the contents of the safe deposit box. App. 22, 33. The only similarity between the two actions is that both involved the same Decedent's Estate.

II. The trial court erred in finding that the Pro Se Petitioners failed to present genuine issues of

material fact in support of the Pro Se Petitioners' claims against the Respondents by rebutting the Respondents showing that no unauthorized person was granted access to the safe deposit box The Peoples Bank of Collinsville, Alabama rented on July 29, 1998 to Nora Lee Jones who died in Etowah County, Alabama on September 7, 1995. App. 13.

The evidence was presented in the form of Official Probate and Circuit Court of Dekalb County, Alabama Records documenting examples of signatures of the person who was alleged to have been granted access as well as signatures of the person the Pro Se Petitioners asserts was actually granted access. App. 33-43. In addition, the Pro Se Petitioners presented his own pro se testimony challenging the authenticity of the signatures on the safe deposit box's Original Record of Safe Entries. App. 21-22. This evidence was sufficient to create a genuine issue of material fact as to the authenticity of the signatures on the Record.

ARGUMENT

The trial court specifically ruled that the Respondents were entitled to a judgment as a matter of law under the doctrine of *res judicata*. App. 13. The first reason the trial court's ruling in this regard is reversible error is the

fact that the Respondent, Liberty Bank of Collinsville, Alabama, failed to plead the affirmative defense of *res judicata*. The second reason is that the requisite elements of *res judicata* were not established.

I. The Respondent, Liberty Bank of Collinsville, Alabama failed to plead the affirmative defense of *res judicata*.

The record on appeal contains no answer filed the the Respondent, Liberty Bank of Collinsville, Alabama. The first pleading filed by the Bank appears to be the Motion for Summary Judgement filed on August 16, 2001. App. 13. This pleading does not raise the affirmative defense of *res judicata*. Generally, an affirmative defense that is not pleaded when the answer is filed is deemed to have been waived. *Johnson v. Life Ins. Co. of Alabama*, 581 So.2d 438 (Ala. 1991). Rule 8(c), Alabama Rules of Civil Procedure provides that a claim of *res judicata* is an affirmative defense which must be specifically plead. Even the motion for summary judgment filed by the Respondents failed to raise the issue of *res judicata*. According to the Court Record, the first time the issue was raised appears to be in oral argument before the trial court on the motion for summary judgment. Although the defense may be revived that the adverse party offers no objection, *Bechtel v. Crown Central Petroleum*

Corp., 451 So.2d 793 (Ala. 1984) under Rule 15(d), Alabama Rules of Civil Procedure, such revival does not apply to summary judgement hearings. *Rector v. Better Houses, Inc.*, [1991438] (Ala. 2001). Pursuant to Rule 15(b), Alabama Rules of Civil Procedure, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in our respect as if they had been raised in the pleadings. If evidence is objected to at trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party and maintain the party's action or defense upon the merits.

The summary-judgment context is different from the situation where an affirmative defense has been tried on the merits without objection, because, at the summary judgement state of litigation, there has been no trial before fact-finding. A summary judgement motion simply tests the merits of a case. (Citations omitted). While such an adjudication is an adjudication on the merits, the adjudication is not the product of a trial on the merits. Thus, where there is no trial, Rule 15(b) cannot apply. *See Blue Cross and*

Blue Shield of Alabama v. Weitz, 913 F.2d 1544 (11th Cir. 1990). For this reason, an affirmative defense the Respondents has waived cannot be revived by the fact that it is raised and litigated in a summary judgment proceeding. *Wallace v. Ala. Association of Classified School Employees*, 463 So.2d 135 (Ala. 1984). Therefore, because the issue of *res judicata* was not raised prior to the summary judgement proceeding, it was raised by the Respondent and could not be revived by discussion of that unplead affirmative defense at the summary judgment hearing.

The first time the Respondent raised the issue of *res judicata* was in amended motion for summary judgment filed several weeks after the original motion for summary judgment. Because that issue was not raised in the initial pleading, it has been waived. Rule 8(c), Alabama Rules of Civil Procedure.

II. The elements of *res judicata* have not been established.

In addition to procedural deficiency regarding the pleading of the affirmative defense of *res judicata*, the elements of *res judicata* have not been established. The Respondents correctly sets forth the necessary requirements for an action to be barred by *res judicata* in its replied brief. Those elements are (1) a prior action with a

judgment on the merits; (2) rendered by a Court of competent jurisdiction; (3) with substantial identity of the parties in the prior action and in the present action; and (4) with the same cause of action presented in both actions. *Coyle v. Ala. Power Co.*, 611 So.2d 19 (Ala. 1992).

The Pro Se Petitioners do not challenge that there has been prior action where elements one and two have been satisfied. However, the third and forth elements of *res judicata* are not present in this case. The only evidence before the Court regarding the identity of the parties in the prior action is that the present action involves the parties involved in the prior action, together with the addition of the Respondent, Liberty Bank of Collinsville, Alabama. It is undisputed that Liberty Bank of Collinsville was not a Defendant in the prior action. *Res judicata* does not require complete identity of the parties that can bar an action against a person not a party to the previous litigation where the non-party's interest was represented adequately by a party to the original suit. *Dairyland Ins. Co. v. Jackson*, 566 So.2d 723 (Ala. 1990). However, the Respondent conceded that the fourth element of *res judicata* had not been met in reply observing that "if the claim of wrongful safety deposit box entry had been made aginst Franklin Jones and Donna Jones in the previous action, they

would have denied that alligation as they have in this action." The statement "if the claim in the present case had been made, Franklin Jones and Donna Jones would have denied the allegations." However, it is undisputed that the claim of breach of contract by the Bank regarding wrongful entry into the safe deposit box has never been placed befor a Court prior to the initiation of the claims in the action. Althought it is undisputed that the facts giving rise to the present litigation are collaterally related to the claims in the previous action against persons alleging various claims on behalf of the Estate of Nora Lee Jones, that is where the similarity between the two lawsuits ends. Althought the Respondent argued that the claims could have been litigated in the prior litigation, there is nothing in the record to indicated what claims were, in fact, litigated in that action. The record contains only the orders of the trial court referencing an attempted settlement between the parties without exchanged releases, which did not include the Respondent in this case. The complaint in that action is not contained in the record on appeal. Therefore, there was no evidence before the trial court from which it could determine what claims were actually litigated in the prior action. App. 9-18.

Without evidence of what claims were actually litigated in the prior action, together with the admitted fact that the present claim against the Bank was not litigated, as well as the fact that the Bank was not a party to the prior proceeding, the summary judgment may not be upheld on the basis of *res judicata*.

III. The trial court erred in finding that the Pro Se Petitioners failed to present genuine issues of material fact in support of their claim against the Respondent, Liberty Bank of Collinsville, Alabama.

In granting summary judgment, the trial court found that there was no material contradiction of Respondent Diane Massey's affidavit regarding illegal entry into the safe deposit box at issue. App. 13. While it is true that the Pro Se Petitioners were unable to produce testimony of any individual to challenge the assertion that Franklin Jones was the person allowed into the safe deposit box on September 8, 1995, the Pro Se Petitioners did present substantial evidence creating a genuine issue of material fact as to whether it was, in fact, Franklin Jones who was allowed entry into the safe deposit box on that date. App. 33-43.

Once a party moving for a summary judgment establishes that no genuine

issue of material fact exists, the burden shifts to the non-movant to present substantial evidence creating a genuine issue of material fact. "Substantial evidence" is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." In reviewing a summary judgment, the Court views the evidence in the light most favorable to the non-movant and entertains such reasonable inferences as the jury would have been free to draw. *Potter v. First Real Estate Co., Inc.* {1010339} (Ala. 2002).

Contrary to the Respndent's assertion, the Pro Se Petitioners produced substantial evidence in support of the claim that the Bank imporperly allowed a person other than Franklin Jones entry into the safe deposit box. Particualy, the Pro Se Petitioners attached an Exhibit to the Complaint when it was originally filed indicating that other than Nora Lee Jones, only the signature of Franklin Jones was signed to gain access to the safe deposit box. App. 21-23.

Also on November 5, 2001 the trial court requested and received the original Rental Agreement along with the original Record of Safe Entries indicating the dates entry had been allowed into the safe deposit box. App. 19-23. On November 15, 2001 the trial

court signed an Order In The Circuit Court of Dekalb County, Alabama's Case Number 2001-301. App. 9-18. The Pro Se Petitioner's assertion was that the signature purporting to be that of Franklin Jones on 09/08/95 was, in fact, a forgery made by another individual. App. 21-27. A review of the signatures contained on the copy of the signature card readily reveals discrepancies in the various signatures. In response to the Respondent's motion for summary judgment, the Pro Se Petitioners offered numerous Exhibits containing examples of signatures of Franklin Jones as well as signatures of Donna Jones, whom the Pro Se Petitioners asserted had forged Franklin Jones' name on the signature card, thus gaining entry to the safe deposit box and "transferring warranties" to Respondent, Liberty Bank of Collinsville, Alabama (7-4-207.(a)(2) Transfer warranties. Code of Alabama 1975). App. 32-43.

The documents submitted with the compliant and in response to the motion for summary judgment constitute substantial evidence creating a material issue of fact as to whether the signature contained on the Bank's original Record of Safe Entries was in fact authentic. App. 21-27. A jury could review the signature examples and conclude that the signature on the Bank's original Record of Safe Entries was a forgery. From this conclusion, a jury could question the credibility of

the Bank's employee who testified that Franklin Jones was the only person allowed in the safe deposit box. App. 33-43. This is especially so given the fact that the Respondent Diane Massey is the only witness to the physical presence in the Bank vault where Safe Deposit Bax 881 was located.

One document was of particular significance labled as an Exhibit, regarding a check Respondent Donna Jones signed on as the Estate of Nora Lee Jones account. App. 33. The fact that Respondent Donna Jones was allowed to execute checks on the account of Nora Lee Jones at the Respondent's Bank, suggest that the Respondent Bank may have been lenient with Respondent Donna Jones regarding the accounts of Nora Lee Jones, including Safe Deposit Box 881 rented on July 29, 1988. App. 21-22. In addition, the Pro Se Petitioners submitted Exhibits establishing that Respondent Donna Jones had been present in the Respondent's Bank on 07/05/96, a date on which access was allowed to the safe deposit box. App. 10, 21-22. A comparison of the purported signature of Franklin Jones on 07/05/96 with that of the challenged release of liability and entry signatures for 09/08/95 reveals a striking similarity between those three signatures as well as a striking contrast to the remaining signatures purporting to be that of Franklin Jones. App. 22. From these authentic records, a jury could reasonably conclude that

the purported signatures of Franklin Jones on the Record of Safe Entries on 09/08/95 and 07/05/96 were in fact forgeries and that the Respondent Bank had improperly allowed access to the safe deposit box to someone other Franklin Jones.

The evidence was properly before the trial court, both in the form of exhibits as well as the complaint and testimony of the Pro Se Petitioners at the summary judgment hearing. When considered together, the Pro Se Petitioners produced substantial evidence creating a genuine issue of material fact as to the authenticity of the signatures on the Respondent Bank's original Record of Safe Entries for Safe Deposit Box 881 and thus a question of fact as whether the Respondent Bank properly allowed access to the safe deposit box. Because the Pro Se Petitioners submitted substantial evidence in support of the claim of breach of contract by Respondent, Liberty Bank of Collinsville, Alabama, the summary judgment is due Certiorari Review.

CONCLUSION

The Pro Se Petitioners are due Certiorari Review of the Summary Judgment "Denied" with "No Opinion" on February 21, 2003.

The Pro Se Petitioners were not

barred by the Doctrine of *res judicata* in filing the July 9, 2001 Complaint and the Pro Se Petitioners did present genuine issues of material fact in support of the claims against the Respondents.

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APPENDIX

(EXHIBIT 1)

IN THE SUPREME COURT OF ALABAMA
February 21, 2003

1020290
Ex parte Chester Jones and Joseph Seymour Jones, PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (in re: Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et al.) (DeKalb Circuit Court: CV-01-301: Civil Appeals: 2010309).

CERTIFICATE OF JUDGEMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certorari is denied.

Writ Denied - No Opinion
WOODALL, J. Moore, C.J., and Houston, Lyons, and Johnston, J.J. Concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court. WEitness my hand this 21st day of February, 2003

"s/ Robert G. Esdale, Sr."
Clerk, Supreme Court of Alabama

(EXHIBIT 2)

IN THE SUPREME COURT OF ALABAMA

January 6, 2003

1020290 -
Ex parte Chester Jones and Jospeh Seymour Jones, PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et al.) (DeKalb Circuit Court: CV-01-301; Civil Appeals: 2010309).

NOTICE

Respondent's motion to dismiss is denied as moot.

I Robert G. Esdale, Sr. as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court. Witness my hand this 6th day of January 2003

"s/ Robert G. Esdale, Sr."
Clerk, Supreme Court of Alabama

(EXHIBIT 3)

IN THE SUPREME COURT OF ALABAMA

January 2, 2003

1020290
Ex parte Chester Jones and Joseph Seymour Jones, PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et al.) (DeKalb Circuit Court: CV-01-301; Civil Appeals: 2010309).

The petitioner having filed the corrected brief on December 6, 2002, the "notice of noncompliance - second notice; order" to petitioner dated December 19, 2002, is withdrawn.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in daid Court. Witness my hand the 2nd day of January 2003

"s/ Robert G. Esdale, Sr."
Clerk, Supreme Court of Alabama

(EXHIBIT 4)
IN THE SUPREME COURT OF ALABAMA
December 19, 2002

1020290
Ex parte Chester Jones and Joseph Seymour Jones, PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et al.) (DeKalb Circuit Court: CV-01-301; Civil Appeals: 2010309).

NOTICE OF NONCOMPLIANCE - SECOND NOTICE; ORDER

The petitioner having been notified that the petition for writ of certioari and brief are not in compliance with the Alabama Rules of Appellate Procedure, as amended, and the petitioner having failed to file replacement documents in compliance with the appeallate rules, as required by Rule 32(c) (2), Ala. R. App. P., as amended;

IT IS ORDERED that the petitioner shall show cause in writing within 7 days of the date of this order why the noncompliance documents should not be stricken. Alternatively, the petitioner shall file a petition and brief in compliance with the rules as required by the first notice issued.

Questions concerning this order should be directed to the Office of the

Clerk of the Supreme Court of Alabama.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court. Witness my hand this 19th day of December 2003

"s/ Robert G. Esdale, Sr."
Clerk, Supreme Court of Alabama

(EXHIBIT 5)
November 01, 2002

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2010309

Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et al. (Appeal from DeKalb County Circuit Court: CV-01-301).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing.

"s/John H. Wilkerson, Jr., Clerk"
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL 36104-3741
(334) 242-4095

(EXHIBIT 6)
Sep - 6 2002

STATE OF ALABAMA - - JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
SPECIAL TERM, 2002

2010309
Chester Jones and Joseph Seymour Jones v. Liberty Bank of Collinsville, et al. Appeal from DeKalb Circuit Court (CV-01-301).

CRAWLEY, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a) (2) (F), Ala. R. App. P.; McGinnis v. Jim Walter Homes, Inc., 800 So. 2d 140 (Ala. 2001); Burns v. Marshall, 767 So. 2d 347 (Ala. 2000); Brushwitz v. Ezell, 757 So. 2d 423 (Ala. 2000; and Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341 (Ala. 1997).

This Case was transferred to this court by the supreme court, pursuant to Section 12-2-7(6), Ala. Code 1975.

Yates, P.J., and Thompson and Pittman, JJ., concur.

John Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of

record in said court.

Witnes my hand 6th day of September , 2002

"s/ John H. Wilkerson, Jr."
Clerk, Court of Civil Appeals
of Alabama

(EXHIBIT 7)

Chester Jones and Joseph Seymour Jones,

PLAINTIFFS

v.

Liberty Bank of Collinsville, Alabama; Liberty Bank of Collinsville, Alabama's Branch Officer as President; Liberty Bank of Collinsville, Alabama's Branch Officer, Individually; The Estate of Nora Lee Jones, Deceased; Franklin Derrick Jones, as Executor of the Estate of Nora Lee Jones, Deceased; Franklin Derrick Jones, Individually; and Donna Jones,

DEFENDANTS

* * * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF
DEKALB COUNTY, ALABAMA

CIVIL ACTION NO. CV-2001-301

ORDER

On July 29, 1988, Nora Lee Jones rentat a safe deposit box at the Peoples' Bank, Collinsville, Alabama (hereafter Bank). Pursuant to the rental agreement, Nora lee Jones

authorized Franklin Jones, and Janice Small, or ither of them to access the subject safe deposit box and to remove any and all contents thereof.

On September 7, 1995, Nora lee Jones died. The bank's records indicate that following her death the safe deposit box was entered on the following dates:

September 8, 1995
September 11, 1995
September 12, 1995
September 23, 1995
July 5, 1996

The Bank records reflect that Frankie Jones was the person who entered the safe deposit box on each such occasion.

On October 9, 1995, the Probate Court of DeKalb County, Alabama granted letters testamentary to Franklin Jones. Theis Court assumes that Frankie Jones and Franklin Jones are the same person.

On July 22, 1996, the Probate Court of DeKalb County, Alabama entered a decree which provides that "all personal property that is within the corpus of {the Estate of Nora Lee Jones} is awarded to Franklin Jones." On August 2, 1997, the herein Plaintiffs filed a Notice of Appel from said Order of the Probate Court, which said appeal was docketed in the Circuit Court as case numbered CV-1996-350. On April 15,

1997, the Circuit Court entered an Order in CV-1996-350 vacating the Probate Order of July 22, 1996, and direct that all "real property, personal property and the Estate of Nora Lee Jones, deceased shall pass pursuant to Item IV of the Last Will and Testament of said decedent in equal shares to Dillie Ann Adams, Franklin Jones, Chester Jones and Seymour Jones."

On July 18, 1997, the herein Plaintiffs filed an action in the Circuit Court of DeKalb County, Alabama against Franklin Derrick Jones, individually and as executor of the estate of Nora Lee Jones, and against Donna Jones, aleging that the Defendants had embezzled and wasted estate assets, and that the Defendants ahd defruded the Plaintiffs and otherwise breached the Defendant's Fiduciary duties. This case was docketed as case number CV-1997-271.

On August 28, 1997, the Court in case number CV-1996-350 entered an order that "the issues in this case have been resolved and are moot. The estate will be finalized in Probate Court."

On December 18, 1997, the Estate of Nora Lee Jones was removed from the Probate Court of DeKalb County, Alabama, which said estate was docketed as case number CV-1997-500, and same was consolidated with then pending action in case number CV-1997-271.

On December 16, 1999, the parties reached a settlement of case numbers CV-1997-500 and CV-1997-271, which said settlement is more fully set out in the order attached hereto and made a part hereof by reference.

On July 9, 2001, the Plaintiffs, Chester Jones and seymour Jones, filed the instant action, case number CV-2001-301. The Plaintiffs contend that on September 8, 1995, the signature of Franklin Jones Jones was forged or otherwise falsified, and that the person who entered the box on that date was not Franklin Jones' but rather his spouse, Donna Jones.[1]

Beginning on July 29, 1988, Franklin Jones had the right to enter the subject safe deposit box by virtue of the rental agreement signed by Nora Lee Jones on that date. That authorization was never rescinded. On

---

[1]The Plaintiffs' Complaint only alleges an illegal entry into the subject safe deposit box on September 8, 1995; however, the Plantiffs' Motion for Summary Judgement refers to entries on September 8, 1995, and July 5, 1996. Because the Plaintiffs have not plead any wrongful act on any date other than September 8, 1995, it is not necessary for the Court to address any conduct than that occurring on September 8, 1995.

October 9, 1995, Franklin Jones was appointed executor of the estate of Nora Lee Jones estate, and continued to have the authority to enter the safe deposit box after that date.

All of the parties to this case have filed Motions for summary Judgment. In suport of the Defendants' respective Motions this Court finds the affidavit of Diane Massey to be uncontroverted, and therefore dispositive. She has stated under oath that she admitted Franklin Jones to the box on September 8, 1995, and that no one other than Franklin Jones was granted access to the box on that date.

Since the Plaintiffs' Complaint only alleges an illegal entry on September 8, 1995, and since there is no material contradiction of Diane massey's affidavit, this Court finds no material dispute of fact.

More importantly, however, this Court finds that the Defendants are entitled to a judgment as a matter of law under the doctrine of res judicata. On December 16, 1999, the parties settled all claims in cases CV-97-271 and CV-97-500. The issues in those cases were identical to the issues raised in the present litigation. The only difference is that the Plaintiffs have added the Liberty Bank and its employees as parties defendant to the present action.

The claims against Liberty Bank and its employee cannot prevail because it is undisputed that the Bank and its employee acted properly in allowing Franklin Jones access to the safe deposit box on September 8, 1995.

On the basis of the findings of this court whether set out herein or not, this Court finds that there is no material dispute of fact, and that the Defendants are entitled to a summary Judgment as a matter of law. It is, therefore,

ORDERED, ADJUDGED AND DECREED that Summary Judgment shall be and is hereby entered in favor of the Defendants and against the Plaintiffs on all claims.

Costs are taxed to the Plaintiffs.

DONE this 15th day of November, 2001.

"s/ David A. Rains, Circuit Judge "

(EXHIBIT 8)

IN RE: THE ESTATE OF NORA LEE JONES, DECEASED

* * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

CASE NO.: CV-97-500-R

CONSOLIDATED WITH

J. SEYMOUR JONES and CHESTER JONES,

PLAINTIFFS

vs.

THE ESTATE OF NORA LEE JONES, DECEASED; FRANKLIN DERRICK JONES, AS EXECUTOR OF THE ESTATE OF NORA LEE JONES, DECEASED; FRANKLIN DERRICK JONES, INDIVIDUALLY; and DONNA JONES,

DEFENDANTS

* * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

CASE NO.: CV-97-271-R

ORDER

Upon the joint stipulation and consent of all parties, the Court hereby orders the following:

1. Executor Franklin Derrick Jones shall file an accounting of the safety deposit box of the deceased within sixty days of the date of this order.

2. Executor Franklin Derrick Jones shall file an accounting of all accounts (including those that were survivorship accounts and those titled solely in her name), receipts and disbursements during the administration of the estate of Nora Lee Jones, deceased, within sixty days of the date of this order.

3. Executor Franklin Derrick Jones shall file an amendedinventory of the items of personalty owned by the deceased at the time of her death within sixty days from the date of this order. Said inventory shall list individually only those items which, in the opinion of the Executor, have a value of $50.00 or greater.

4. (A). The Honorable Robert French, Fort Payne, Alabama (256) 845-2250, is appointed as mediator in this case. (B). Unless otherwise agreed by the parties, the cost of mediation shall be borne equally by the parties. The cost of mediation shall be paid in the manner required by the mediator,

including payment of mediation fee in event of cancellation, as provided by the mediator. (C). The Mediator shall fix a place and time for the mediation, and the conference shall be set by the mediator with regard to the schedules and commitments of the parties and counsel. The mediator may continue or adjourn a mediation conference in his discretion so long as such continuance or adjournment is within the time constraints set out herein. (D). A represnetative of each party, which may be counsel, having full authority to settle the entire case for the parties must attend the mediation conferences. (E). Prior to the initial mediation conference, the parties shall deliver to the mediator all materials requested by him relating to the parties' respective claims and defenses. (F). The mediator shall have the authority to control the procedure to be followed in mediation, may adjourn a mediation conference and set times for reconvening; and may suspend or terminate the mediation whenever, in his opinion, the matters are not appropriate for any furhter mediation. He may meet and consult privately with any party or counsel at any time. Counsel may consult privately with their client at any time during mediation. (G). All discussions, representations, and statements made at the mediation conferences, or with the mediator privately shall be confidential and deemed privileged by both the mediator and all parties as settlement

negotiations and thus inadmissible in a court of law. Each party shall have the right to instruct the mediator or not to disclose to the other parties certain information or facts furnished by that party to the mediator. Mediation proceedings shall not be recorded by a court reporter or by an electronic recording device, except as necessary to memorialize any settlement reached. The mediator shall not be called as a witness, nor shall the mediator's records be subpoenaed or used as evidence, with respect to the claims in this case. (H). The parties are encouraged to resolve as many issues as possible during mediation. Partial or complete settlements shall be immediately reduced to writing in the presense of the mediator and shall be shall be signed by all parties or their counsel. (I). Within ten days of termination of mediation, whether by settlement or otherwise, the mediator shall file a final status report with the court, with copies to all parties, stating that mediation is complete, and whether or not settlement was reached.

Done this 16th day of December, 1999.

"s_____"
CIRCUIT JUDGE

Copy to:

Stephen P. Bussman
J. David Jodd
Robert B. French, Jr.

(EXHIBIT 9)

WEAR, WILSON & SCOTT, P.A.
Attorneys at Law
407 Alabama Avenue South
Fort Payne, Alabama 35967

Mailing Adress:
P. O. Drawer 680348
Fort Payne, AL 35968

Telephone:
(256) 845-2713
(256) 845-4156

Telecopier:
(256) 845-7619

Robert G. Wilson
David C. Wear
Nikki Parrish Scott

November 5, 2001

Honorable David Rains
Circuit Court Judge
DeKalb County Courthouse
Fort Payne, AL 35967

RE: JONES VS. LIBERTY BANK; CV-01-301

Dear Judge Rains:

Pusuant to your request enclosed is the original Rental Agreement along with the original Record of Safe Entries in the above styled cause.

If you need anything further, please let me know.

Sincerely,

WEAR, WILSON & SCOTT, P. A.

"s/ Nikki Scott"

NS/pg

Enclosures

pc: Steve Bussman
Chester Jones
Joseph Seymour Jones

FIRM OR INDIVIDUAL

Colinsville, Alabama 1-29 1988

I desire to rent Safe No. 881 in vault of The Peoples Bank, Colinsville, Ala., and hereby agree to pay for same $ 800 per annum until keys are surrendered, subject to the rules and conditions printed on the several receipts, which from time to time may be given by said bank, to which rules and conditions I hereby assent and agree.

I hereby acknowledge to have received 2 keys to safe.

I hereby authorize the bank to charge my account with the rent due annually.

Access to said safe and the right to remove all or any contents thereof may be had by Franklin Jones and Janice Small or either of them, or by deputy authorized in writing signed by Nora Lee Jones and

Signature Nora Lee Jones

Signature

Colinsville, Ala., 19

I hereby acknowledge that all property stored in the vault of THE PEOPLES BANK, pursuant to the within letting and extensions and renewals thereof has been safely withdrawn and all liability of said bank therefor is hereby released.

Signature Franklin Jones

BOX NO. NAME ADDRESS

881 Nora Lee Jones, Box 76, Colville, Al

-21-

(EXHIBIT 10)

NO. 881

SIGNATURE OF RENTER

DUE

AMOUNT

	DATE AND HOUR	SAFE ENTERED BY	ATTENDANT	
1	9-8-95 900	Franklin Jones		1
2	9-11-95 10.30	Franklin Jones		2
3	4.-12-9[illegible]	[illegible]		3
4	9-23-95 4:25	[illegible]		4
5	7-5-96 10:45	[illegible]		5
6				6
7				7
8				8
9				9
10				10

RECORD OF SAFE ENTRIES: SAFE DEPOSIT DEPARTMENT
THE PEOPLES BANK, COLLINSVILLE, ALA.

FILED
AUG 2 4 2001
JIMMY LINDSEY
CLERK

(EXHIBIT 11)

NO. 881 | SIGNATURE OF RENTER | DUE 7.00 | AMOUNT

	DATE AND HOUR	SAFE ENTERED BY	ATTENDANT	
1	9-27-88 11:30	Nora Lee Jones		1
2	11-1-89 12:19	Nora Lee Jones		2
3	4-3-91 1:05	Nora Lee Jones		3
4	1-27-93 1:35	Nora Lee Jones		4
5	4-28-93 12:15	Nora Lee Jones		5
6	11-24-93 1:55	Nora Lee Jones		6
7	1-24-94 1:08	Nora Lee Jones		7
8	10-25-94 11:45	Nora Lee Jones		8
9	2-23-96 12:30	Nora Lee Jones		9
10	10-26-98 12:30	Nora Lee Jones		10

RECORD OF SAFE ENTRIES: SAFE DEPOSIT DEPARTMENT
THE PEOPLES BANK, COLLINSVILLE, ALA.

(EXHIBIT 12)

CHESTER JONES and JOSEPH SEYMOUR JONES,

PLANTIFF

VS.

LIBERTY BANK OF COLLINSVILLE, ALABAMA; LIBERTY BANK OF COLLINSVILLE, ALABAMA'S BRANK OFFICER AS PRESIDENT; LIBERTY BANK OF COLLINSVILLE, ALABAMA'S BRANCH OFFICER, INDIVIDUALLY; THE ESTATE OF NORA LEE JONES, DECEASED; FRANKLIN DERRICK JONES, AS EXECUTOR OF THE ESTATE OF NORA LEE JONES, DECEASED; FRANKLIN DERRICE JONES, INDIVIDUALLY; and DONNA JONES,

DEFENDANTS

* * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

CASE NO.: CV-01-301

COMPLAINT

1. PLAINTIFFS are residents of the State of Alabama and adult legatees of the Estate of Nora Lee Jones, deceased, by virtue of said deceased's Last Will and Testament signed October 27, 1994 and admitted into the Probate Court of Dekalb County, Alabama on September 21, 1995.

2. Nora Lee Jones died in Etowah County, Alabama, on or about the 7th day of September, 1995, and was at the time of death domiciled in this County and State, leaving assets in the State and in Safe Number 881 of Liberty Bank of Collinsville, Alabama's Safe Deposit Department.

3. Defendants Liberty Bank of Collinsville, Alabama and Liberty Bank of Collinsville, Alabama's Branch Officer as President, were contractually obligated to comply with Liberty Bank's Safe Deposit Department's agreement regarding Safe Number 881 as sign and agreed on July 29, 1988 by Nora Lee Jones, Deceased, Janice Small, and Franklin Jones with respects to entry access and removal of all or any contents of Safe Number 881.

COUNT I

4. Defendant Liberty Bank of Collinsville, Alabama and Liberty Bank of Collinsville, Alabama's Branch Officer as President, did breach its contractual obligation and fiduciary duty by allowing entry access and falsified release of liability regarding its Safe Number 881 on September8, 1995 at 9:00 a.m. when someone other than Franklin Jones, Executor-to-be as of October 9, 1995 or Janie Small, Executor-to-withdraw from serving regarding the Estate of Nora Lee Jones, Deceased, as of September 20, 1995 to

enter and falsely imply release of Liberty Bank of Collinsville, Alabama of liability for the safe's contents and, hereto, attached Exhibit "A".

COUNT II

5. Said breach of contractual obligation and fiduciary duty is hereby claimed as having taken place on September 8, 1995 and this complaint's filing is within the six (6) year statue of limitations regarding the breach of the contractual agreement signed July 29, 1988 between Liberty Bank of Collinsville, Alabama, Nora Lee Jones, Deceased, Franklin Jones, and Janie Small.

Wherefore, the above premises considered, your Plaintiffs pray of this Court entry an order:

1. Entry of a Judgment against the Defendants Liberty Bank of Collinsville, Alabama; Liberty Bank of Collinsville, Alabama's Branch Officer As Preident; Liberty Bank of Collinsville, Alabama's Branch Officer, Individually; The Estate of Nora Lee Jones, Deceased; Franklin Derrick Jones As Executor of the Estate of Nora Lee Jones, Deceased; Franklin Derrick Jones, Individually; and Donna Jones in the sum of $25,000,000.00 for breach of contractual obligation and fiduciary duty, fraud, waste, embezzlement, failure to disclose assets of the estate of Nora Lee Jones,

Deceased, misrepresentation, and conversion;

and

2. Voiding the entry, access, removal, and release falsely implied or executed because the actions did not require compliance with the agreement signed by Nora Lee Jones, Deceased, Franklin Jones, and Janie Small and as agreed on July 29, 1988 nor did the entry, access, removal and release comply with the interests of the actual adult legatees named in the Last Will and Testament of Nora Lee Jones, Deceased, as signed and notarized on October 27, 1994 and, petitioned and probated into the Probate Court of Dekalb County, Alabama on September 21, 1995.

BY: "s/ Chester Jones"
Adult Legatee of the ESTATE OF NORA LEE JONES, DECEASED
1464 St. Stephens Road
Mobile, Alabama 36603-5031

"s/ Joseph Seymour Jones"
Adult Legatee of the ESTATE OF NORA LEE JONES, DECEASED
1464 St. Stephens Road
Mobile, Alabama 36603-5031

"FILED JUL 9 2001 JIMMY LINDSEY CLERK"

(EXHIBIT 13)

Moore's Federal Rules
Pamphlet
2003

Part 2: Federal Rules of Evidence

Rule 901. Requirement of Authentication or Identification.

(a) General Provision.-The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations.-By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge.-Testimony that a matter is what it is claimed to be.

(2) Non expert opinion on handwriting.-Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness.-Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like.-Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification.-Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations.-Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answerring to be the one called or (B) in the case of a business, the call was made to a place of

business and the conversation related to business reasonable tractacted over the telephone.

(7) Public records or reports.- Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation.-Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process or system.-Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statue or rule.-Any method of

authentication or identification provided by Act of Congress or by other rules prescribed by the Supreme Court pursuant to statutory authority. {Adopted Jan. 2, 1975, effective July 1, 1975.}

(EXHIBIT 14)

Code of Alabama. Section 7-4-207.
Transfer Warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (Section 7-3-305(a)) any party that can be asserted against the warrantor; and

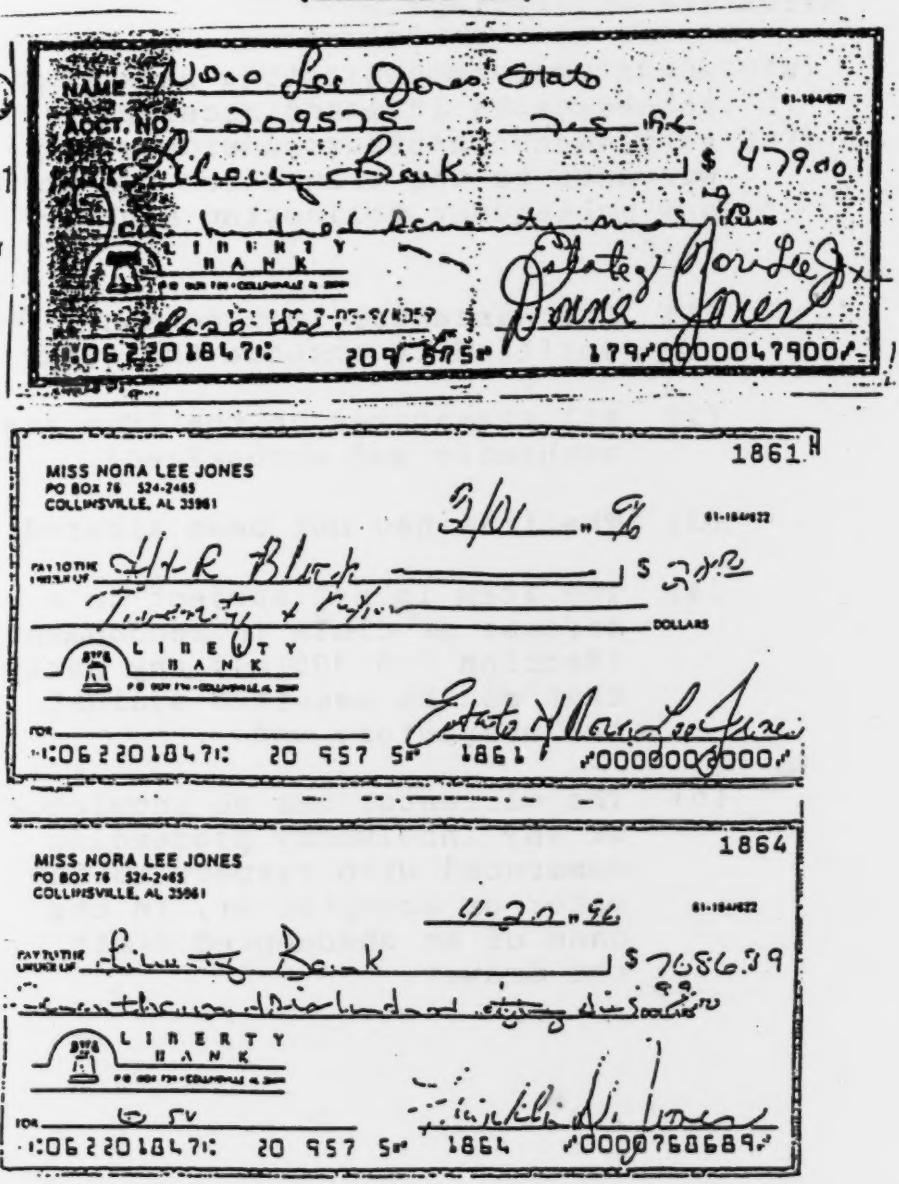
(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(EXHIBIT 15)

FILED

AUG 2 4 2001

JIMMY LINDSEY
CLERK



(EXHIBIT 16)

AFFIDAVIT OF LEGATEE

STATE OF ALABAMA)
DEKALB COUNTY)

IN THE PROBATE COURT OF
DEKALB COUNTY, ALABAMA

IN THE MATTER OF THE ESTATE OF NORA LEE JONES, DECEASED

Before me, Rebecca B. Clayton a Notary Public in and for said County, in said State, personally appeared Donna Jones to me personally known and who being by me first duly sworn and on this oath does depose and say:

1. That she is over nineteen years of age and is a legatee under the Last Will and Testament of Nora Lee Jones who departed this life on the 7th day of September, 1995.

2. That said Last Will and Testament was duly proved and allowed for Probate under a Decree of the Probate Court of DeKalb County, Alabama, on the 9th day of October, 1995.

3. That Franklin Jones was appointed as Executor of the Estate of Nora Lee Jones, deceased, under a Decree of said Court on the 9th day of October, 1995.

4. That all personal property and assets of said Estate received and remaining in the hands of said Executor, after paying all debts filed or due from said Estate, have been delivered to said legatees, namely, Franklin Jones and Donna Jones, receipt of which is hereby acknowledged, and release of the executor has been executed and filed, and I, Donna Jones, do hereby consent to the discharge of said Executor.

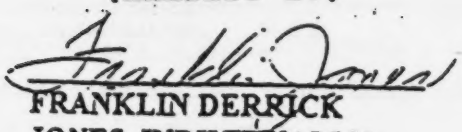
This 17th day of April, 1996.

Donna Jones
Donna Jones

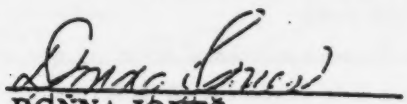
Subscribed and sworn to before me this the 17th day of April, 1996.

Rebecca B. Clayton
NOTARY PUBLIC

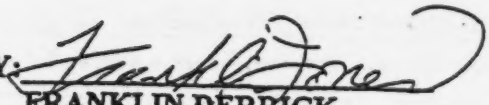
(EXHIBIT 17)



FRANKLIN DERRICK JONES, INDIVIDUALLY
P.O. Box 187/ 127 Richey Drive
Collinsville, Alabama 35961



DONNA JONES,
P.O. Box 187/ 127 Richey Drive
Collinsville, Alabama 35961

BY: 

FRANKLIN DERRICK JONES, AS FORMER EXECUTOR OF THE ESTATE OF NORA LEE JONES, DECEASED
P.O. Box 187/ 127 Richey Drive
Collinsville, Alabama 35961

FILED

AUG 2 4 2001

JIMMY LINDSEY
CLERK

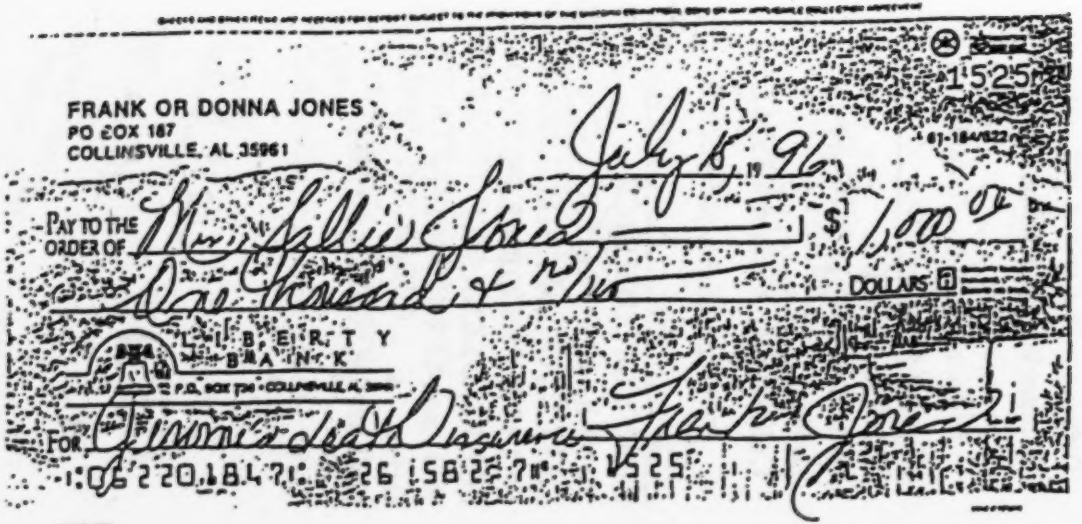
(EXHIBIT 18)

FRANKLIN DERRICK
JONES, INDIVIDUALLY
P.O. Box 187/ 127 Richey
Drive
Collinsville, Alabama 35961

DONNA JONES,
P.O. Box 187/ 127 Richey
Drive
Collinsville, Alabama 35961

BY:
FRANKLIN DERRICK
JONES, AS FORMER
EXECUTOR OF THE
ESTATE OF NORA LEE
JONES, DECEASED
P.O. Box 187/ 127 Richey
Drive
Collinsville, Alabama 35961

FILED
AUG 24 2001
JIMMY LINDSEY
CLERK



Aunt Lillie Jones

FILED

AUG 2 4 2001

JIMMY LINDSE
CLERK.

(EXHIBIT 19)

(EXHIBIT 20)

PETITION FOR CONSENT SETTLEMENT AND
DISCHARGE OF EXECUTOR

STATE OF ALABAMA
DEKALB COUNTY

PROBATE COURT

IN THE MATTER OF THE ESTATE OF NORA LEE JONES, DECEASED

TO THE HONORABLE PAUL THOMAS, JUDGE OF PROBATE COURT, DEKALB COUNTY.

COMES YOUR PETITIONER, Franklin Jones, and respectfully shows unto this Honorable Court the following facts as basis for final settlement of said Estate and for the discharge of your petitioner as Executor of said Estate:

1. That your Petitioner was appointed as Executor of said Estate and Letters of Testamentary were granted to him by an order and decree of this Honorable Court on the 9th day of October, 1995.

2. That more than six (6) months have expired from the date that the first notice was given of the appointment of Executor of said Estate to the date of the filing of this petition.

3. That all debts filed or due from said Estate have been paid in full.

4. That all of the personal property and assets belonging to said Estate remaining in the hands of your Petitioner, as Executor of said Estate, have been paid and turned over to the legatees of said estate.

5. That the legatees have signed an Affidavit disclosing that they are over 19 years of age and that all of the personal property and assets remaining in the hands of the Executor have been paid and turned over to them and that they consent that said Estate be finally settled and that the Executor be discharged. Said Affidavits are attached hereto and made a part hereof the same as if fully set forth herein.

Therefore, the Premises considered your Petitioner prays that upon hearing of this petition, that your Honor will make an Order and enter a Decree discharging your Petitioner as Executor of said Estate.

This petition is filed under Authority of Section 43-2-506 of the Code of Alabama, as amended.

This 16th day of April, 1996.

Franklin Jones EX.G

As Executer of Estate of Nora Lee Jones, deceased

STATE OF ALABAMA
COUNTY OF DEKALB

FILED

APR 24 1996

Before me, a Notary Public, in and for said County and said State, personally appeared Franklin Jones who being duly sworn, deposes and says that he has read the foregoing petition and that the averments contained therein are true and correct to his best knowledge, information and belief.

Franklin Jones
Affiant

Sworn to and subscribed before me the undersigned Notary Public this 17 day of April, 1996.

Eileen B. Clayton
NOTARY PUBLIC

(EXHIBIT 21)

PETITION FOR PROBATE OF SELF-PROVING WILL

STATE OF ALABAMA)
DEKALB COUNTY)

IN THE PROBATE COURT
SEPTEMBER , 1995

The petition of Franklin Jones for the Probate of the Will of Nora Lee Jones, deceased.

To the Honorable Paul Thomas, Judge of Probate, DeKalb County.

The Petitioner, Franklin Jones, represents that Nora Lee Jones died in Etowah County, Alabama, on or about the 7th day of September, 1995, and was at the time of death domiciled in this County and State, leaving assets in this State and leaving a will duly signed by her and attested by W. H. Beck, Jr., and Betty L. Smith (that said Will is a self-proved Will): and that petitioner believes he is named in the Will as Personal Representative, and does now herewith surrender the said Will to the Court.

Your Petitioner further represents that the names, ages and condition of the next of kin are as follows:

Brother, Chester Jones, & Mittie Jones, 4805 Blue Haven Dr. NW, Huntsville, AL 35810

Niece, Rosa Lee Jones, Collinsville, Alabama 35961
P.O. Box

The Premises Considered, your petitioner respectfully prays that the said Will of the said decedent may be probated and admitted to record as the true Will of the said deceased, and that the said next of kin be given notice of this application as required by law, and that all such orders and decrees including an order granting letters testamentary, be made by this Honorable Court which may seem proper.

Franklin Jones EX. G9
Petitioner

FILED
AUG 24 2001
WINNIE KELSEY
CIRCUIT CLERK

STATE OF ALABAMA
DEKALB COUNTY

Franklin Jones being duly sworn, deposeth and say an oath: That the allegations contained in the foregoing petition true, according to the best of his knowledge, information and belief.

Franklin Jones
Affiant

Subscribed and sworn to before me, this the 21st day of September, 1995.

Rebecca L. Caughron
NOTARY PUBLIC

(EXHIBIT 22)

DATE OPENED 12-11-04 BY BM
INITIAL DEPOSIT $ 4300.00 FORM: ☐ CASH ☒
PREVIOUS BANK

ADDITIONAL INFORMATION: An investigative consumer report, including information as to character, general reputation, personal characteristics, and mode of living may be made and you may make a written request within a reasonable time to receive a complete and accurate written disclosure of the nature and scope of the investigation.

Nora Lee Jones 10-24-09

Di Li 2277888

ACCOUNT OWNER NAME & ADDRESS
Nora Lee Jones Franklin Jones
P.O.Box 76
Collinsville,Al 35961

ACCOUNT NUMBER 67 199

NUMBER OF SIGNATURES REQUIRED FOR WITHDRAWAL 1

TYPE OF ACCOUNT ☒ NEW ☐ EXISTING ☐ PERSONAL ☐ BUSINESS ☐ CHECKING ☒ SAVINGS ☐ MONEY MARKET ☐ NOW ☐ CERTIFICATE OF DEPOSIT ☐

SIGNATURE(S) - THE UNDERSIGNED AGREE(S) TO THE TERMS STATED ON PAGES 1 AND 2 OF THIS FORM, AND ACKNOWLEDGE(S) RECEIPT OF A COMPLETED COPY ON TODAY'S DATE. THE UNDERSIGNED ALSO ACKNOWLEDGE(S) RECEIPT OF A COPY OF AND AGREE(S) TO THE TERMS OF THE FOLLOWING DISCLOSURE(S):

☒ Deposit Account Disclosure ☒ Funds Availability Disclosure
☒ Electronic Funds Transfer Disclosure ☒ Truth-in-Savings Disclosure

Signature(s) Identifying Info.

(1) Nora Lee Jones 423 32 7997
(2) Franklin Jones
(3)
(4)

FILED
AUG 2 4 2001
JIMMY LINDSEY
CLERK

Original Sent to Collville Branch 1-14-05

☐ AUTHORIZED SIGNER (name) Individual Accounts Only
X

This is your (check one): ☒ Permanent ☐ Temporary account agreement.

BACKUP WITHHOLDING CERTIFICATIONS

TIN: [illegible]

☒ TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

☒ BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report [illegible]

☐ EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.

☐ NONRESIDENT ALIENS - I am not a United States person, or if I am an individual, I am neither a citizen nor a resident of the United States.

SIGNATURE - I certify under penalties of perjury the statements checked in this section.

(EXHIBIT 23)

Compass Bank

SIGNATURE CARD

Date	Prepared By	Branch/Cost Center
Rev 10-21-94	B. Williams	Ft. Payne 02311

[X] CONSUMER ACCOUNT
[ ] NON-CONSUMER ACCOUNT

[ ] New Account
[ ] Name Change
[X] Add Customer
[ ] Change Authorized Signers

** New Resolution is required for Non-Business Organizations and Non-Consumer Accounts **

APPLICABLE TO NON-CONSUMER ACCOUNTS: The undersigned agree(s) to the terms of the Agreement for Non-Consumer Deposit Accounts and acknowledge(s) receipt of a copy of the Agreement and the current Interest and Service Charge Schedule for Non-Consumer Accounts.

ONLY ONE ACCOUNT PER CARD
USE BLACK MEDIUM POINT PEN

ACCOUNT NAME	No. Sig. Required	BANK NO. ACCOUNT NO.
Nora Lee Jones or Janie L. Small or Franklin Jones	1	09 737 9455 2

Name Nora Lee Jones Title

Signature Nora Lee Jones

Name Janie L. Small Title

Signature X Janie L. Small

Name Franklin Jones Title

Signature Franklin Jones

Name Title

Signature

DOCUMENTATION

(EXHIBIT 24)

Compass Bank

SIGNATURE CARD

Date	Prepared By	Branch/Cost Center
Rev 10-21-94	B. Williams	Ft Payne 02311

[x] CONSUMER ACCOUNT
[ ] NON-CONSUMER ACCOUNT

[ ] New Account
[ ] Name Change
[x] Add Customer
[ ] Change Authorized Signers

** New Resolution is required for Non-Business Organizations and Non-Consumer Accounts **

APPLICABLE TO NON-CONSUMER ACCOUNTS: The undersigned agree(s) to the terms of the Agreement for Non-Consumer Deposit Accounts and acknowledge(s) receipt of a copy of the Agreement and the current Interest and Service Charge Schedule for Non-Consumer Accounts.

ONLY ONE ACCOUNT PER CARD
USE BLACK MEDIUM POINT PEN

ACCOUNT NAME	No. Sig. Required	BANK NO. ACCOUNT NO.
Ecra Lee Jones or Janie L. Small or Franklin Jones	1	09 496 9184 9

Name Ecra Lee Jones Title

Signature X Ecra Lee Jones

Name Janie L. Small Title

Signature X Janie L. Small

Name Franklin Jones Title

Signature Franklin Jones

Name Title

Signature

DOCUMENTATION

(EXHIBIT 25)

Compass Bank

SIGNATURE CARD

Date	Prepared By	Branch/Cost Center
Rev 10-21-94	B. Williams	Ft. Payne C2311

[x] CONSUMER ACCOUNT
[ ] NON-CONSUMER ACCOUNT

[ ] New Account
[ ] Name Change
[x] Add Customer
[ ] Change Authorized Signers

** New Resolution is required for Non-Business Organizations and Non-Consumer Accounts **

APPLICABLE TO NON-CONSUMER ACCOUNTS: The undersigned agree(s) to the terms of the Agreement for Non-Consumer Deposit Accounts and acknowledge(s) receipt of a copy of the Agreement and the current Interest and Service Charge Schedule for Non-Consumer Accounts.

ONLY ONE ACCOUNT PER CARD

USE BLACK MEDIUM POINT PEN

ACCOUNT NAME	No. Sig. Required	BANK NO. ACCOUNT NO.
Nora Lee Jones or Janie L. Small or Franklin Jones	1	09 136 4794 1

Name Nora Lee Jones Title

Signature Nora Lee Jones

Name Janie L. Small Title

Signature X Janie L. Small

Name Franklin Jones Title

Signature Franklin Jones

Name Title

Signature

DOCUMENTATION

RESPECTFULLY SUBMITTED this 22nd day of May, 2003.

BY: Chester Jones

CHESTER JONES
Pro Se Petitioner
Adult Legatee of the Estate of
Nora Lee Jones, Deceased

Joseph Seymour Jones

JOSEPH SEYMOUR JONES
Pro Se Petitioner
Adult Legatee of the Estate of
Nora Lee Jones, Deceased
1464 St. Stephens Road
Mobile, Alabama 36603-5031
Phone: 251/433-0053

CERTIFICATE OF SERVICE

We here by certifythat we have served forty (40) copies of the Petition for Writ of Certiorari on the Clerk of the Supreme Court of the United States of America at 1 First Street, N.E., Washington, D.C. 20543 and three (3) copies on Attorney Nikki Parish Scott (Liberty Bank of Collinsville, Alabama Respondent) at Ware, Wilson & Scott at 407 Alabama Avenue, South Forth Payne, Alabama 35967, Attorney Stephen P. Bussman (Attorney for Franklin Jones & Donna Jones, Respondents) at 212 Avemie Avemie, South, Fort Payne, Alabama 35967 & Former Attorney for the Pro Se Petitioners, Attorney Charles H. Jones at 454 Conti Street, Mobile, Alabama

36602 by Certified U.S. Mail properly addressed with sufficient postage this the 22 Day of May, 2003.

Chester Jones
Pro Se Petitioner

Joseph Seymour Jones
Pro Se Petitioner

Chester Jones and Joseph Seymour Jones being duly sworn, deposeth and say an oath: That the allegations contained in the foregoing are true, according to the best of their knowledge, information and belief.

Chester Jones
Affiant

Joseph Seymour Jones
Affiant

Subscribed and sworn to before me, this the 22 day of May, 2003.

Lenard Gaillard
NOTARY PUBLIC
My comm exp 8/31/2003

FORMAL REQUEST FOR ORAL ARGUMENT

The Pro Se Petitioners Chester Jones and Joseph Seymour Jones believes that oral argument will aid the Supreme Court of the United States in its decisional process in this Case.

Chester Jones
Pro Se Petitioner

Joseph Seymour Jones
Pro Se Petitioner